



H.R. 1873 - Small Business Fairness in Contracting Act

Floor Situation

H.R. 1873 is being considered on the floor pursuant to a structured rule. The rule:

- Provides one hour of debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Small Business.
- Waives all points of order against its consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides for consideration of only those amendments made in order pursuant to the rule. Each amendment is debatable for 10 minutes.
- Provides one motion to recommit with or without instructions.
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

This legislation was introduced by Representative Bruce Braley (D-IA) on April 17, 2007. The bill was ordered to be reported from the Committee on Small Business, by voice vote, on April 26, 2007. Subsequently, the bill was referred to the Committee on Government Reform, which reported the bill in the nature of a substitute by voice vote, on May 1, 2007. The Committee on Rules reported out the Government Reform version of the bill on May 8, 2007.

H.R. 1873 is expected to be considered on the floor on May 9, 2007.

Executive Summary

H.R. 1873 makes amendments to the Small Business Act in order to assist small businesses in participating in the federal procurement process. The bill targets three main areas: contract bundling, contracting goals for small businesses, and the government's database of small business concerns. The legislation also safeguards taxpayers from waste and abuse.

Summary

Definitions

The bill redefines and strengthens language to limit contract bundling that adversely affected small businesses.

- Bundled contract is defined as “a contract or an order that is entered into to meet requirements that are consolidated in a bundling of contract requirements without regard to its designation by the procuring agency or whether a study of the effects of the solicitation on civilian or military personnel has been made.”
- Bundling of contract requirements is defined as “the use of any bundling methodology to satisfy 2 or more procurement requirements for goods or services, including any construction services, previously supplied under separate smaller contracts or orders that is likely to be unsuitable for award to a small business concern due to:
 - The diversity, size, or specialized nature of the elements of the performance specified;
 - The aggregate dollar value of the anticipated award;
 - The geographical dispersion of the contract or order performance sites; or,
 - Any combination of the points above.
- Bundling methodology is defined as “a solicitation to obtain orders for a single contract or order, or a multiple award contract or order, or a solicitation of offers for the issuance of a task or a delivery order under an existing single or multiple award contract or order.”

**Note: Contracts are exempt from all of these definitions if the contracts are below \$5 million or \$65 million for construction contracts.*

Justification

Amends section 644(a) of title 15 U.S. Code by requiring a contracting agency to make available certain information on incumbent contract holders, a description of the industries that might be interested in bidding on the contract requirements, and the number of small businesses listed in the industry categories that could be excluded from the future bidding if the contract is combined or packaged.

The Small Business Administration (SBA) Administrator may intervene if no notification of the information is made available and the Administrator believes that the contract may be bundled. The Administrator may request that the solicitation process be postponed for up to 10 days to permit the Administrator to review and make recommendations.

Appeals

A small business or a trade association may request the SBA repeal the procurement and to assist in furthering the efforts of that small business or trade association if they believe they are adversely affected by a proposed procurement.

Review

If the SBA and a procuring agency cannot settle on a contract bundling, then the Office of Federal Procurement Policy of the Office of Management and Budget will be called upon to settle the dispute.

Small Business Goal

The bill calls for an increase in the government-wide small business procurement goal from 23% to 25%. The bill also provides for an increase in the government-wide procurement goal for small disadvantaged and woman-owned businesses from 5% to 8%.

**Note: The small business procurement goal of 23% was established in 1997.*

Annual Goal Negotiation

Before the close of each fiscal year, the President must establish a government-wide small business procurement goal for the following fiscal year.

Usage of Small Companies in Goal Achievement

This section permits that a small business receiving a contract may only count for one additional category goal. As current law stands, businesses may be counted for up to four procurement category goals.

**Note: The term "category goal" is defined in section 644(g)(2) of title 15 U.S. Code as "small businesses owned and controlled by service-disabled veterans, by qualified HUBZone small businesses, by small businesses owned and controlled by socially and economically disadvantaged individuals, and by small businesses owned and controlled by women."*

Annual Plan for Each Agency

Before the start of every fiscal year, the head of each Federal agency will be required to submit to the SBA Administrator and Congress a detailed plan on how it intends to meet its small business procurement goals.

Making Small Business the First Choice

Raises the maximum dollar value of the small business threshold to the "Simplified Acquisition Threshold."

**Note: This permits the small business threshold to be adjusted based on the rate of inflation. The current threshold is held at \$100,000.*

Uniform Metric for Subcontracting Achievements

The Administrator must require that each prime contractor report small business

subcontract usage at all tiers based on the percentage of the total dollar amount of the contract award.

Subcontracting Database

Requires the Administrator to create a password-protected database that will help the Administration to assist small businesses in marketing to large corporations that have not achieved their small business goals.

National Database

The Administrator must contact a small business within 30 days if that small business has been entered into the Central Contractor Registry.

**Note: "Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including Federal agency contract and assistance awards. Please note that the term 'assistance awards' includes grants, cooperative agreements, and other forms of federal assistance."*

Agency Obligation for Fulfilling Contracting Goals

The head of each Federal agency must submit a report to Congress at the end of every fiscal year detailing the contracts of that agency that were awarded to small businesses. If the percentage of awards to small businesses is under 25%, then the report must include reasons for why small businesses received less than 25% of the contracts and what will be done in the following year by the agency to ensure that the goal of 25% will be reached.

Appropriate Limits on Value of Sole Source Contracts

Sets December 31, 2007, as the deadline for Congress to address sole-source contracting by Alaska Native Corporations and economically devastated Indian Tribes. If this deadline passes without Congressional action, the Administrator for Federal Procurement Policy, in consultation with the SBA Administrator and program participants, must establish appropriate limits on the value of contracts awarded without the use of competitive procedures.

Small Business Size Protection Notifications

If a small business is awarded a contract based on its standing as a small business and then is determined to no longer meet the standards of being a small business, a note of this must be made in the Central Contractor Registry.

When the Administrator reports on small business goals, the accomplishments must be certified as "estimated," until the time when the Comptroller General certifies that there are no outstanding data issues with the Federal Procurement Data System-Next Generation.

For each Federal agency, the Inspector General must submit to Congress a report on the dollar amount and number of contract awards that were made to businesses that did not qualify as small businesses.

Review of National Registry

Every 2 years, the Administrator is required to perform an audit of the Central Contractor Registry to determine that the Dynamic Small Business Search section is purged of any businesses that are not small businesses.

Recertification

If a small business is awarded a contract and is close to exceeding the small business standards, then the business must recertify each year that it is in fact still a small business.

“Close to exceeding” is defined as:

- A number-of-employees standard if the number of employees of the business is 95% or more of the maximum number of employees allowed under the standard; and,
- A dollar-volume-of-business standard if the dollar volume of business is 80% or more of the maximum dollar volume allowed under the standard.

*Note: [Criteria for small business](#)

Authorization of Appropriations

The bill authorizes such sums as may be necessary to carry out this Act and the amendments made by this Act.

Amendments to be Considered Pursuant to the Rule

1) Rep. Reyes (D-TX) The amendment would aid small businesses that have been included in the Small Business Subcontracting Plans of prime contractors that obtain federal contracts.

2) Reps. Shuler (D-NC)/Chabot (R-OH) The amendment extends small business contracting goals to overseas contracts.

3) Reps. Bean (D-IL)/Chabot (R-OH) The amendment would raise the government-wide small business procurement goal from 25 percent to 30 percent.

4) Reps. Sestak (D-PA)/Chabot (R-OH) The amendment closes a loophole in the current bill that allows agencies to avoid doing small business impact studies by designating contracts as "transformed". It also lowers the new dollar threshold established to \$1.5 million to ensure a greater portion of contracts are reviewed for their impact on small business as well as taxpayer savings.

5) Reps. Welch (D-VT)/Inslee (D-WA)/Blumenauer (D-OR) The amendment sets a 5% procurement goal for the Federal government to contract with "green" small businesses.

6) Rep. Wynn (D-MD) The amendment commissions the Small Business Administration to complete a study on the feasibility and desirability of providing financial incentives to federal prime contractors who meet the goals set forth in their subcontracting plan of utilizing small business concerns owned by economically or socially disadvantaged individuals.

7) Rep. Jackson-Lee (D-TX) The amendment provides that whenever the SBA and the contracting procurement agency fail to agree and the Administrator decides to take action to further the interests of a small business concern, this amendment requires the SBA to make available on their website any action taken and result achieved by the Administrator.

8) Rep. Jackson-Lee (D-TX) The amendment requires that, when the SBA and the contracting procurement agency fail to agree and the Administrator submits the matter to the head of the agency for a determination, a copy of the written response to the Administrator be sent to the Committee of the House and Senate that has jurisdiction over the agency concerned, in addition to the Committees on Small Business and Oversight & Government Reform.

Background

In 1952, President Dwight Eisenhower sought the creation of a small business agency to replace the Reconstruction Finance Corporation that was created in the 1930s to deal with the effects of the Great Depression. Congress created the Small Business Administration (SBA) by passing the Small Business Act on July 30, 1953. The SBA's mission is to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government...be placed with small business enterprises."

The Small Business Act has been amended over the years to keep pace with the marketplace and ensure that small businesses remain competitive in the Federal procurement process.

The Federal government spent roughly \$417 billion on goods and services in 8.3 million different contract awards in 2006. Almost \$80 billion in contract awards were granted to small businesses in 2006, representing close to 21.5% of awarded contracts.

Contract bundling is the practice of combining two or more contracts into one package. This tends to make it difficult for small businesses to compete for federal contracts but often provides for increased efficiency. Congress took action to resolve this problem with the Small Business Reauthorization Act of 1997 (PL 105-135). This bill defined the term

contract bundling and required the head of each agency to avoid contract bundling that precluded small business participation as prime contractors. In 2002, the President requested the Office of Management and Budget to cease unnecessary contract bundling and requested that the Office of Federal Procurement Policy create and implement this plan.

Views

“The Administration supports efforts to increase opportunities for small businesses to compete for Federal government acquisitions. The Administration, however, opposes H.R. 1873, because it would impose broad, burdensome statutory restrictions on Federal agencies’ ability to conduct acquisitions and establish unrealistic small business procurement goals. Although the Administration appreciates the efforts of the House Oversight and Government Reform Committee to address some of the Administration’s concerns, its reported bill contains many of the same objectionable provisions as the introduced bill and the bill as reported by the House Small Business Committee.” Statement of Administration Policy released on May 8, 2007.

CBO Estimate

“CBO estimates that implementing H.R. 1873 would cost \$10 million in fiscal year 2008 and \$75 million over the 2008-2012 period, subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or revenues.” CBO Cost Estimate published on May 7, 2007

<http://www.cbo.gov/ftpdocs/80xx/doc8071/hr1873hogr.pdf>

Staff Contact

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